APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,223	02/03/2004	Kenji Ishii	9683/165	2202

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EXAMINER
BATURAY, ALICIA

ART UNIT	PAPER NUMBER
2441	

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11/29/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Advisory Action **Before the Filing of an Appeal Brief**	10/772,223	ISHII ET AL.
	Examiner	Art Unit
	Alicia Baturay	2441

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 November 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment: a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: *None.*

   Claim(s) objected to: *None.*

   Claim(s) rejected: *29-38.*

   Claim(s) withdrawn from consideration: *None.*

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
   See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.

13. ☐ Other: _____.

/Wing F. Chan/
Supervisory Patent Examiner, Art Unit 2441

U.S. Patent and Trademark Office

PTOL-303 (Rev. 08-06)   Advisory Action Before the Filing of an Appeal Brief   Part of Paper No. 20101122

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant Argues: Guimbellot fails to teach or suggest the features of claim 29 of "the first device being configured to transmit node function definition data to the second device in response to the receipt of the transfer instruction."

In Response: The examiner respectfully submits that Guimbellot teaches the first device (node 210) being configured to transmit node function definition data (when node 210 fails, its resource groups are transitioned to one or more available servers) to the second device (available servers (e.g., node 212)) in response to the receipt of the transfer instruction (fail-over can be triggered manually - see Guimbellot, page 5, paragraph 52)

USPTO personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure. In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim should not be read into the claim. E-Pass Techs., Inc. v. 3Com Corp., 343 F.3d 1364, 1369, 67 USPQ2d 1947, 1950 (Fed. Cir. 2003) (claims must be interpreted "in view of the specification" without importing limitations from the specification into the claims unnecessarily). In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550- 551 (CCPA 1969). See also In re Zletz, 893 F.2d 319, 321-22, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) ("During patent examination the pending claims must be interpreted as broadly as their terms reasonably allow.... The reason is simply that during patent prosecution when claims can be amended, ambiguities should be recognized, scope and breadth of language explored, and clarification imposed.... An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed, as much as possible, during the administrative process."). See MPEP §2106 (II)C.

"Node function definition data" is not further defined in the claim language. This renders the rejection proper, and thus the rejection stands.

Applicant Argues: Guimbellot, Nguyen, and Bell, either alone or in combination, fail to teach or suggest the feature of claim 29 of "a function relocation unit configured...to determine new node locations of at least one node function, and to relocate the at least one node function to the new node locations in accordance with a relocation plan."

In Response: The examiner respectfully submits that Nguyen teaches a function relocation unit configured...to determine new node locations of at least one node function (Assume there are three (3) demands 1, 2, 3820a-c, between Node A 810a and Node 810e. Also assume that these demands are being routed as follows: Before Reroute: Demand 1 uses path A-C-E; Demand 2 uses path A-C-D-E; Demand 3 uses path A-B-D-E. Suppose that there is congestion on arc AC 830ac. Now let us assume that the routing solution is determine[d] to be as follows: Demand 1 uses path A-C-E; Demand 2 uses path A-B-D-E; Demand 3 uses path A-B-C-D-E), and to relocate the at least one node function to the new node locations (Configuration Process 260 makes the changes to the elements in Network 100, to affect the routing of various demands in Network 100 - see Nguyen, page 4, paragraph 85 - page 5, paragraph 122) in accordance with a relocation plan (Network may create Reroute 70 to reroute some or all of Traffic to avoid Node 620f to Node 12201. During times of Congestion, if Reroute 70 is a "better" route, then Demand which has the highest priority value will be given the "first chance" to utilize Reroute 70 - see Nguyen, page 3, paragraphs 63-72). This renders the rejection proper, and thus the rejection stands.

Applicant Argues: Nguyen fails to teach or suggest the features of claim 29 of "a path restructure unit configured to restructure a structure of paths in the network," and "a function relocation unit configured...to relocate the at least one node function."

In Response: The examiner respectfully submits that a path restructure unit configured to restructure a structure of paths in the network (Analysis Engine 230 retrieves data necessary for analysis from the Data Store 250. The retrieved data is used in the next step 540 of problem formulations. This entails the formulation of the routing optimization problem. The next step is the step of problem solving 550 which formulates an optimized routing solution - see Nguyen, page 3, paragraphs 57-72 and Nguyen, page 5, paragraphs 107-122); and a function relocation unit configured...to relocate the at least one node function (Assume there are three (3) demands 1, 2, 3820a-c, between Node A 810a and Node 810e. Also assume that these demands are being routed as follows: Before Reroute: Demand 1 uses path A-C-E; Demand 2 uses path A-C-D-E; Demand 3 uses path A-B-D-E. Suppose that there is congestion on arc 830ac. Now let us assume that the routing solution is determine[d] to be as follows: Demand 1 uses path A-C-E; Demand 2 uses path A-B-D-E; Demand 3 uses path A-B-C-D-E), and to relocate the at least one node function to the new node locations (Configuration Process 260 makes the changes to the elements in Network 100, to affect the routing of various demands in Network 100 - see Nguyen, page 4, paragraph 85 - page 5, paragraph 122). This renders the rejection proper, and thus the rejection stands.

Applicant Argues: Bell fails to teach or suggest the features of "the first device being configured to transmit node function definition data to the second device in response to receipt of the transfer instruction."

In Response: The examiner respectfully submits that Bell is not cited in the rejection as teaching this claim limitation. Guimbellot is. The mapping of this limitation is discussed above.

Applicant Argues: In addition, Bell also fails to teach or suggest the features of "a function relocation unit configured...to determine new node locations of at least one node function, and to relocate the at least one node function to the new node locations in accordance with a relocation plan."

In Response: The examiner respectfully submits that Bell is not cited in the rejection as teaching this claim limitation. Nguyen is. The mapping of this limitation is discussed above.